

REMARKS/ARGUMENTS

Claims 1, 5, 8, 11-22, and 36 are pending in this application. Claims 1, 5, 8, 11-22, and 36 stand rejected. The sole remaining issue raised in the Office Action (Current Action) of July 23, 2010 is as follows: Claims 1, 5, 8, 11-22, and 36 are rejected under 35 U.S.C. § 103(a) as being unpatentable.

In response, Applicant respectfully traverses the outstanding claim rejection and requests reconsideration and withdrawal in light of the amendment to the claims and remarks presented herein.

REJECTIONS UNDER 35 U.S.C. § 103

Claims 1, 5, 8, 11-22, and 36 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,291,533 to Fleischner (hereinafter Fleischner) in view of An Outstanding Food Source of Vitamin C, The Lancet, Vol. 320, Issue 833, p. 873 to Brand et al. (hereinafter Brand) and further in view of U.S. Patent Application Publication No. 2002/0192314 to Cho et al. (hereinafter Cho).

Claims 1, 5, 8, 11-22, and 36 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Fleischner in view of Brand and further in view of Cho.

The combination of Fleischner and Brand and Cho simply fails to teach each and every limitation listed in the claims because they fail to predict the synergistic effect found with the present invention. The present inventors found surprisingly and unexpectedly a synergistic effect by their combination using a heretofore unknown method for determining the combined contribution of lipophobic and lipophilic antioxidants regardless of the blood-type of the user. Specifically, the combination fails to disclose a composition in which the lipophilic and lipophobic antioxidants comprise 30 to 85% by weight of the total ingredients.

In *KSR Int'l. Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1739 (2007), the Court stated that “a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. Although common sense directs one to look with care at a patent application that claims as innovation the combination of two known devices according to their established functions, it can be important to identify a reason that would have prompted a person of

ordinary skill in the relevant field to combine the elements in the way the claimed new invention does. This is so because inventions in most, if not all, instances rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known.”

Fleischner is directed to the use of specific compositions that are directed to specific blood types (entitled, “Dietary supplements for each specific blood type”) that do not encompass the weight range required by the present invention. The Current Action cites to Columns 7 to 8 of Fleischner for the proposition that it teaches a composition that is “40/60 to 90/10 percent by weight” lipophilic and lipophobic antioxidants. However, a close inspection of the portion cited (and the other examples of Fleischner) show the use of mere units of vitamin E (25 IU to 400 IU) in a composition that add up to 1.3+ grams and in which the combined total of the antioxidants is less than 10 percent of the total weight. Thus, Fleischner does not “teach 40/60 to 90/10 percent by weight” of that the composition is at least 30% of the total weight of the composition. Furthermore, nothing in Fleisher teaches or suggests higher percent weights because, in fact, they reach their limit as a percentage given the complex nature of the various compositions used for the different blood types. The Office cannot read percentages into the art that are simply not there without a specific motivation to do so. As a building block, as indicated by the Supreme Court in KSR, Fleischner fails to provide a block with the listed percent by weight of the claimed antioxidants in the claimed invention.

Brand and Cho fail to provide the missing teaching, that is, the weight percent. Thus, combination of Fleischner and Brand and Cho does not establish a *prima facie* case of obviousness because Fleischner fails to provide the claimed weight range of the lipophilic and lipophobic antioxidants of the present invention. The combination thus fails to provide each element of the invention or a reasonable expectation of success. MPEP § 2143.

Accordingly, claims 1, 5, 8, 11-22 and 36 are not rendered obvious by Fleischner, Brand and Cho, or any combination thereof. Applicants respectfully request the Examiner withdraw the rejection under 35 U.S.C. § 103(a).

CONCLUSION

In light of the remarks and arguments presented above, Applicants respectfully submit that the claims in the Application are in condition for allowance. Favorable consideration and allowance of the pending claims 1, 5, 8, 11-22, and 36 are therefore respectfully requested.

In view of the above, Applicants believe the pending Application is in condition for allowance. Applicants believe this paper is being filed with all required fees. However, if any additional fee is due, including those for an extension of time please charge any fees required or credit any overpayment to Chalker Flores, LLP's Deposit Account No. 50-4863 during the pendency of this Application pursuant to 37 CFR 1.16 through 1.21 inclusive, and any other section in Title 37 of the Code of Federal Regulations that may regulate fees. If an extension of time is required with this response but is not included, Applicants hereby petition for a Request for Extension of Time under 37 CFR 1.136(a).

If the Examiner has any questions or comments, or if further clarification is required, it is requested that the Examiner contact the undersigned at the telephone number listed below.

Dated: March 9, 2011.

Respectfully submitted,

CHALKER FLORES, LLP

A handwritten signature in dark ink, appearing to read 'Edwin Flores', is written over a horizontal line.

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